



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.03.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P (MD)No.3624 of 2020

and

W.M.P(MD)Nos.3059 & 3060 of 2020

Thirunavukkarasu

... Petitioner

Vs.

The Commissioner,
Devakottai Municipality,
Devakottai,
Sivagangai District.

... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in pursuant to the first impugned demand notice dated 23.10.2019 and the consequential impugned demand notice in Na.Ka.No.0207/2020/A2 dated 11.02.2020 issued by the respondent herein in respect of the Shop No.9, Vadiyar Street, Devakottai, Sivagangai District and quash the same as illegal.

For Petitioner : Mr.B.Anandan

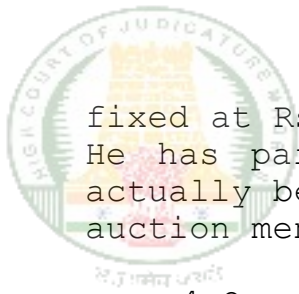
For Respondent : Mr.Mohammed Imran
Standing Counsel

ORDER

This writ petition is filed in the nature of Certiorari, to call for the records relating to the proceedings pursuant to the notice of the respondent namely, The Commissioner, Devakottai Municipality, Devakottai, Sivagangai District, dated 23.10.2019, in respect of Shop No.9, Vadiyar Street, Devakottai, Sivagangai District and set aside the same.

2.Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

3.The petitioner herein is the licence holder of Shop No.9 at Vadiyar Street, Devakottai, Sivagangai District. He has been in possession of the shop at least from 01.04.2016 to 31.03.2019 for which period, auction was conducted and monthly amount payable was



fixed at Rs.4,000/- per month and service tax at Rs.600/- per month. He has paid a sum of Rs.50,000/- as security deposit. He has actually been in possession for nearly a decade prior to the date of auction mentioned above.

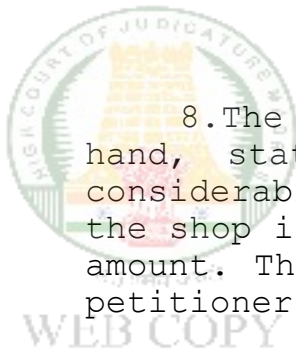
4. On 16.08.2017, the respondent issued a notice to the petitioner claiming Rs.16,800/- as monthly payment and a further direction was issued to pay the arrears with retrospective effect and the petitioner was called upon to pay substantial arrears of monthly rent amount and also service tax which was proportionately increased.

5. Questioning that order, a series of writ petitions had been filed. In a batch of writ petitions in ***W.P. (MD) No. 2737 of 2018 etc., batch, (Sornakalai Vs. The Commissioner, Devakottai Municipality, Devakottai, Sivagangai District)***, by a common order, dated 23.02.2018, a learned Single Judge of this Court examined the demand notice and passed the following order :

"10. In the above circumstances, since already demand notices have been issued by the Municipality, the above demand notices may be treated as show cause notices and the petitioners are directed to give their objections for the same, and after receipt of the objections, the respondent Municipality is directed to consider the objections and pass fresh orders for revising the lease amount. The petitioners are directed to give their objections within a period of two weeks from the date of receipt of a copy of this order and thereafter, the respondent Municipality is directed to consider their objections and pass orders within a period of four weeks thereafter. Till the order is passed by the respondent, the possession of the petitioners shall not be disturbed."

6. In the course of arriving at such conclusion, the learned Single Judge held that the principles of natural justice have not been followed and the order was passed. The present impugned notice has been once again passed without drawing reference to the earlier order in the present writ petition. The petitioner was once again called upon to pay a sum of Rs.16,800/- as monthly payment and proportionately increased service tax and they have been asked to pay the same from April 2016 - 2017 onwards.

7. The learned counsel for the petitioner has raised strong objections to the demand notice stating that the earlier order was not communicated to the petitioner herein and therefore, the objections were not given. It is also pointed out even in the earlier order, the calculation memo as to how the rental amount was fixed, was not given. Therefore, the writ petitioner was handicapped in that he could not give any objections



8.The learned Standing Counsel for the respondent, on the other hand, stated that the writ petitioner is in possession for a considerable period and is paying a sum of Rs.4,000/- per month. If the shop is let out for auction, the Municipality will earn a larger amount. Therefore, he urged that some directions to be given to the petitioner to pay an increased amount every month.

9.Having heard the submissions of the learned counsel for the petitioner and the learned Standing Counsel for the respondent, I am of the view that the impugned order has to be set aside. However, an opportunity is once again granted to the respondent to give a detailed calculation memo and refix the monthly amount payable. This Calculation memo can be served on the petitioner on or before 03.04.2020. For this, the petitioner has to give his objections, if he has any, on or before 24.04.2020. Thereafter, the respondent, have to pass orders on or before 11.05.2020. If the petitioner in his objection, demand a right to be heard, then such opportunity has to be granted by the respondent before passing final orders on or before 11.05.2020.

10.With the above observations, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Commissioner,
Devakottai Municipality,
Devakottai, Sivagangai District.

+1 CC to M/s.B.ANANDAN, Advocate (SR-11603[F] dated 13/03/2020)

W. P (MD) No. 3624 of 2020

10.03.2020

MM

KK/17.03.2020/ 3P- 3C

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